

injunction, either prohibitory or mandatory, to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates this Order.

2. In the same suit, the county attorney, district attorney, criminal district attorney, other attorney acting at the request of the Commissioners' Court, attorney general, or the Commissioner may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to an order of the court.
3. A person who violates this Order, unless other penalties are herein specified, is liable for a civil penalty of not less than \$50.00 nor more than \$1,000.00. Each day the violation occurs or continues is a separate violation. Please also see Section VII, Civil Penalties, of this Order.
4. Any county attorney, criminal district attorney, other attorney at the request of the Commissioners Court, or the attorney general at the request of the Commissioner, may bring a suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

B. Authority of Peace Officer. The portions of this Plan designated as an offense are enforceable by any authorized peace officer within Galveston County, Texas.

XII. REPEAL OF CONFLICTING ORDERS

All orders and resolutions of the Commissioners' Court heretofore enacted that are in conflict herewith are repealed. The Commissioners' Court order adopting the prior dune protection and beach access plan entered August 16, 1993 recorded in volume 300-14, pages 1156-1234 is repealed.

XIII. DEFINITIONS

The following words and terms, when used in this Order, shall have the following meanings, unless the context clearly indicates otherwise.

Affect - As used in this Order regarding dunes, dune vegetation, and the public beach, "affect" means to produce an effect upon dunes, dune vegetation, or public beach use and access.

Amenities - Any nonhabitable major structure including swimming pools, bathhouses, detached garages, cabanas, pipelines, piers, canals, lakes, ditches, artificial runoff channels and other water retention structures, roads, streets, highways, parking areas and other paved areas (exceeding 144 square feet in area), underground storage tanks, and similar structures.

Applicant - Any person applying to Galveston County for a permit and/or certificate for any construction or development plan.

Attorney General (AG) or Office of the Attorney General (OAG) - Attorney General of the State of Texas.

Backdunes - The dunes located landward of the foredune ridge which are usually well vegetated but may also be unvegetated and migratory. These dunes supply sediment to the beach after the

foredunes and the foredune ridge have been destroyed by natural or human activities. In this Order, backdunes shall be understood to be the most landward dunes within the beach/dune system and the most landward feature of the critical dune area.

Beach - See public beach.

Beach access - The right to use and enjoy the public beach, including the right of free and unrestricted ingress and egress to and from the public beach.

Beach and Parks Department - See Parks Department.

Beach/Dune Rules (GLO Rules, GLO Beach/Dune Rules) - Subchapter A of Chapter 15 of Title 31 of the Texas Administrative Code, as amended, affecting Galveston County; at the adoption of this Order the rules are 31 Texas Administrative Code §§ 15.1-15.10, 15.12, 15.21, and 15.35.

Beach/dune system - The land from the line of mean low tide of the Gulf of Mexico to the landward limit of dune formation.

Beach maintenance - The cleaning or removal of debris from the beach by handpicking, raking, or mechanical means.

Beach profile - The shape and elevation of the beach as determined by surveying a cross section of the beach.

Beach-related services - Reasonable and necessary services and facilities directly related to the public beach which are provided to the public to ensure safe use of and access to and from the public beach, such as vehicular controls, management, and parking (including acquisition and maintenance of off-beach parking and access ways); sanitation and litter control; lifeguarding and lifesaving; beach maintenance; law enforcement; beach nourishment projects; beach/dune system education; beach/dune protection and restoration projects; providing public facilities such as restrooms, showers, lockers, equipment rentals, and picnic areas; recreational and refreshment facilities; liability insurance; and staff and personnel necessary to provide beach-related services. Beach-related services and facilities shall serve only those areas on or immediately adjacent to the public beach.

Beach user fee - A fee collected by Galveston County in order to establish and maintain beach-related services and facilities for the preservation and enhancement of access to and from and safe and healthy use of public beaches by the public.

Blowout - A breach in the dunes caused by wind erosion.

Breach - A break or gap in the continuity of a dune caused by wind or water.

Building Official - the county employee within the County Engineer's office, or authorized representative responsible for issuance of Building Permits, Coastal Construction Permits, and subsequent inspections of authorized work.

Building perimeter or footprint - The area of a lot covered by a structure used or usable for habitation. The habitable structure perimeter or footprint does not include incidental projecting eaves, balconies, ground-level paving, landscaping, open recreational facilities (for example, pools and tennis courts), or other similar features.

Building Permit - A permit issued and defined pursuant to the County Floodplain Regulations.

Bulkhead - A structure or partition built to retain or prevent the sliding of land. A secondary purpose is to protect the upland against damage from wave action.

Coastal and shore protection project - A project designed to slow shoreline erosion or enhance shoreline stabilization, including, but not limited to, erosion response structures, beach

nourishment, sediment bypassing, construction of man-made vegetated mounds, and dune revegetation.

Coastal Construction Permit - The document issued by Galveston County to authorize construction or other regulated activities in a specified location seaward of a dune protection line or landward of public beaches lying in the area either up to the first public road parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches. It also certifies that the proposed construction either is consistent with the Galveston County Dune Protection and Beach Access Plan or is inconsistent with that Plan. In the latter case, Galveston County must specify how the construction is inconsistent with the Plan, as required by the Open Beaches Act, § 61.015 of the Texas Natural Resources Code.

Coastal Management Plan - the plan as developed by the Commissioner of the Texas General Land Office under Texas Natural Resources Code §33.052, Development of Coastal Management Program.

Commercial facility - Any structure used for providing, distributing, and selling goods or services in commerce including, but not limited to, hotels, restaurants, bars, rental operations, and rental properties.

Commissioner - "Commissioner" means the Commissioner of the General Land Office.

Commissioners' Court - The County Commissioners' Court of Galveston County, Texas.

Construction - Causing or carrying out any building, bulkheading, filling, clearing, excavation, or substantial improvement to land or the size of any structure. "Building" includes, but is not limited to, all related site work and placement of construction materials on the site. "Filling" includes, but is not limited to, disposal of dredged materials. "Excavation" includes, but is not limited to, removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site. "Substantial improvements to land or the size of any structure" include, but are not limited to, creation of vehicular or pedestrian trails, landscape work (that adversely affects dunes or dune vegetation), and increasing the size of any structure.

Coppice mounds - The initial stages of dune growth formed as sand accumulates on the downwind side of plants and other obstructions on or immediately adjacent to the beach seaward of the foredunes. Coppice mounds may be unvegetated.

Council - The Coastal Coordination Council, as established by the Coastal Coordination Act, Texas Natural Resources Code §33.203(20).

County - As used in this Order, means Galveston County, Texas, Galveston County Commissioners' Court, or its authorized representative.

County Engineer - Engineer for the County of Galveston, Texas or the Engineer's authorized representative.

County Floodplain Regulations - Means the Regulations of Galveston County, Texas for Flood Plain Management adopted by order of the Commissioners' Court of Galveston County, Texas on October 28, 2002 to be effective December 6, 2002 and thereafter, and as such order may be amended.

Critical dune areas - Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the Gulf of Mexico that contain dunes and dune complexes that are essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm

surge, and high wind and waves. Critical dune areas include, but are not limited to, the dunes that store sand in the beach/dune system to replenish eroding public beaches.

Cumulative impact - The effect on beach use and access, on a critical dune area, or an area seaward of the dune protection line which results from the incremental effect of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

Dedication - Includes, but is not limited to, a restrictive covenant, permanent easement, and fee simple donation.

Dune - An emergent mound, hill, or ridge of sand, either bare or vegetated, located on land bordering the waters of the Gulf of Mexico. Dunes are naturally formed by the windward transport of sediment, but can also be created via man-made vegetated mounds. Natural dunes are usually found adjacent to the uppermost limit of wave action and are usually marked by an abrupt change in slope landward of the dry beach. The term includes coppice mounds, foredunes, dunes comprising the foredune ridge, backdunes, and man-made vegetated mounds.

Dune complex or dune area - Any emergent area adjacent to the waters of the Gulf of Mexico in which several types of dunes are found or in which dunes have been established by proper management of the area. In some portions of the Texas coast, dune complexes may contain depressions known as swales.

Dune Protection Act - Texas Natural Resources Code, Chapter 63.

Dune Protection and Beach Access Plan or Plan - Galveston County's legally enforceable program, policies, and procedures for protecting dunes and dune vegetation and for preserving and enhancing use of and access to and from public beaches, as required by the Dune Protection Act and the Open Beaches Act.

Dune protection line - A line established by the County Commissioners' Court for the purpose of preserving sand dunes within Galveston County and within those areas within Galveston County subject to the authority of the Commissioners' Court. No municipality within Galveston County is authorized to establish a dune protection line unless the authority to do so has been specifically delegated to the municipality by the Galveston County Commissioners' Court. The line established by the Commissioners' Court for Galveston County is specifically described in Section II(D)(2) of this Order and coordinate references are provided in Appendix 1 of this Order. All critical dune areas shall be seaward of the dune protection line.

Dune vegetation - Flora indigenous to natural dune complexes, and growing on naturally-formed dunes or man-made vegetated mounds on the Texas coast and can include coastal grasses and herbaceous and woody plants.

Effect or effects - "Effects" include: direct effects - those impacts on public beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and occur at the same time and place; and indirect effects - those impacts on beach use and access, on critical dune areas, or on dunes and dune vegetation seaward of a dune protection line which are caused by an action and are later in time or farther removed in distance than a direct effect, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems. "Effects" and "impacts" as used in this Order are synonymous. "Effects" may be ecological (such as the effects on natural resources and on the components, structures, and

functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.

Eroding area - A portion of the shoreline which is experiencing an historical erosion rate of greater than two feet per year based on published data of the University of Texas at Austin, Bureau of Economic Geology.

Erosion - The wearing away of land or the removal of beach and/or dune sediments by wave action, tidal currents, wave currents, drainage, or wind. Erosion includes, but is not limited to, horizontal recession and scour and can be induced or aggravated by human activities.

Erosion response structure - A hard or rigid structure built for shoreline stabilization which includes, but is not limited to, a jetty, retaining wall, groin, breakwater, bulkhead, seawall, riprap, rubble mound, revetment, or the foundation of a structure which is the functional equivalent of these specified structures.

FEMA - The United States Federal Emergency Management Agency. This agency administers the National Flood Insurance Program and publishes the official flood insurance rate maps.

FEMA Rules - county-adopted requirements for construction required of all construction in areas covered by FEMA insurance.

Foredunes - The first clearly distinguishable, usually vegetated, stabilized large dunes encountered landward of the Gulf of Mexico. On some portions of the Texas Gulf Coast, foredunes may also be large, unvegetated, and unstabilized. Although they may be large and continuous, foredunes are typically hummocky and discontinuous and may be interrupted by breaches and washover areas. Foredunes offer the first significant means of dissipating storm-generated wave and current energy issuing from the Gulf of Mexico. Because various heights and configurations of dunes may perform this function, no standardized physical description applies. Foredunes are distinguishable from surrounding dune types by their relative location and physical appearance.

Foredune ridge - The high continuous line of dunes which are usually well vegetated and rise sharply landward of the foredune area but may also rise directly from a flat, wave-cut beach immediately after a storm.

General Land Office (GLO, Land Office) - The agency of the Texas state government charged with coordinating and overseeing the development and implementation of dune protection and beach access plans by counties and cities on the Gulf of Mexico Coast of the State of Texas.

Geotube® - Geotube is a registered trademark owned by Ten Cate Nicolon, Miratech Division and refers to its' geotube containment system.

GLO Rules – See Beach/Dune Rules.

Habitable structures - Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

Industrial facilities - Includes, but are not limited to, those establishments listed in Part 1, Division D, Major Groups 20-39 and Part 1, Division E, Major Group 49 of the Standard Industrial Classification Manual as adopted by the Executive Office of the President, Office of Management and Budget (1987 ed.). However, for the purposes of this Order, the establishments

listed in Part 1, Division D, Major Group 20, Industry Group Number 209, Industry Numbers 2091 and 2092 are not considered "industrial facilities."

Large-scale construction - Construction activity greater than 5,000 square feet in area and structures greater than two stories in height. Multiple-family habitable structures are typical of this type of construction.

Line of vegetation (also vegetation line) - The extreme seaward boundary of natural vegetation which spreads continuously inland. The line of vegetation is typically used to determine the landward extent of the public beach. On the portions of Texas coast where there is no marked vegetation line or the line is discontinuous or modified, the line of vegetation shall be determined consistent with §15.10(b) of the Texas Administrative Code and the Open Beaches Act, Texas Natural Resources Code §§61.016 and 61.017.

Litter - As authorized by Texas Natural Resources Code §61.122, the Commissioners' Court of a County bordering the Gulf of Mexico or its tidewater limits, by order, may define the term littering. Litter includes any act of placing on the ground, scattering, or leaving unattended upon any beach in Galveston County other than in a proper disposal receptacle, any trash, garbage or debris of any character, including but not limited to food, used containers or packaging, rubber, glass, paper, plastic, wood, metal, non-biodegradable cast-off appliances, or medical waste from land-based activities such as housekeeping, medical treatment or research, recreation, camping, fishing, or picnicking or water-based activities such as shipping, off-shore oil and gas production, and commercial or recreational fishing. Paper and other trash resulting from fireworks exploded on the public beach or within the critical dune area is also considered litter. The County shall regulate litter and criminal penalties will apply where regulations are established.

Littering - See litter.

Littoral owner - means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.

Local government - A municipality, any special purpose district, any unit of government, or any other political subdivision of the state. Unless otherwise explained in this Order, local government shall refer to Galveston County, Texas.

Man-made vegetated mound - A mound, hill, or ridge of sand created by the deliberate placement of sand or sand trapping devices including sand fences, trees, or brush and planted with dune vegetation.

Master plan (Master planned development)- A plan developed by the applicant in consultation with the GLO, the applicant or applicants, and the County, for the development of an area subject to the Beach/Dune Rules, as identified in 31 Texas Administrative Code §15.3. The master plan shall fully describe in narrative form the proposed development and all proposed land and water uses, and shall include maps, drawings, tables, and other information, as needed. The master plan must, at a minimum, fully describe the general geology and geography of the site, land and water use intensities, size and location of all buildings, structures, and improvements, all vehicular and pedestrian access ways, and parking or storage facilities, location and design of utility systems, location and design of any erosion response structures, retaining walls, or stormwater treatment management systems, and the schedule for all construction activities described in the master plan. The master plan shall comply with the Open Beaches Act and the Dune Protection Act. The master plan shall provide for overall compliance with the Beach/Dune Rules and, when approved as an amendment to this Order, may vary from the specific standards, means and methods provided in the Beach/Dune Rules if the degree of dune protection and the public's right to safe

and healthy use of and access to and from the public beach are preserved. If all impacts to dunes, dune vegetation and public beach use and access are accurately identified, the County shall not require permits for construction on the individual lots within the master plan area. Master plans are intended to provide a comprehensive option for planning along the Texas coast.

Material changes - Changes in project design, construction materials, or construction methods or in the condition of the construction site which occur after an application is submitted to the County or after the County issues a Coastal Construction Permit. Material changes are those additional or unanticipated changes which have caused or will cause adverse effects on dunes, dune vegetation, or beach access and use, or exacerbation of erosion on or adjacent to the construction site.

Mitigation sequence - The series of steps which must be taken if dunes and dune vegetation will be adversely affected. First, such adverse effects shall be avoided. Second, adverse effects shall be minimized. Third, the dunes and dune vegetation adversely affected shall be repaired, restored, or replaced. Fourth, the dunes and dune vegetation adversely affected shall be replaced or substituted to compensate for the adverse effects.

National Flood Insurance Act - 42 United States Code, §§ 4001, et seq.

Natural resources - Land, fish, wildlife, insects, biota, air, surface water, groundwater, plants, trees, habitat of flora and fauna, and other such resources.

Open Beaches Act - Texas Natural Resources Code, Chapter 61.

Order "order" means an order of the Commissioners' Court; "Order" means this Order of Commissioners' Court of Galveston County, Texas Adopting the Galveston County Dune Protection and Beach Access Plan.

Owner or operator - Any person owning, operating, or responsible for operating commercial or industrial facilities.

Parks Department - The Galveston County Parks Department.

Permit condition - A requirement or restriction in a permit necessary to assure protection of life, natural resources, property, and adequate beach use and access rights (consistent with the Dune Protection Act and/or the Open Beaches Act) which a permittee must satisfy in order to be in compliance with the permit.

Permit - see Coastal Construction Permit.

Permittee - Any person authorized to act under a permit issued by the County.

Person - An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision, or any international or interstate body or any other governmental entity.

Pipeline - A tube or system of tubes used for the transportation of oil, gas, chemicals, fuels, water, sewerage, or other liquid, semi-liquid, or gaseous substances.

Plan - Galveston County Dune Protection and Beach Access Plan.

Practicable - In determining what is practicable, the County will consider the effectiveness, scientific feasibility, and commercial availability of the technology or technique. The County will also consider the cost of the technology or technique.

Production and gathering facilities - The equipment used to recover and move oil or gas from a well to a main pipeline, or other point of delivery such as a tank battery, and to place such oil or gas into marketable condition. Included are pipelines used as gathering lines, pumps, tanks, separators, compressors, and associated equipment and roads.

Project area - The portion of a site or sites which will be affected by proposed construction.

Public beach or beach - As used in this Order, "public beach" is defined in the Texas Natural Resources Code, §61.013(c). Any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or ferry as provided in §61.021 of the Texas Natural Resources Code.

Recreational activity - Includes, but is not limited to, hiking, sunbathing, and camping. As used in Section 15.3(s)(2)(C) of the Beach/Dune Rules and Section II(F)(3) of this Order, recreational activities are limited to the private activities of the person owning the land and the social guests of the owner. Operation of recreational vehicles is not considered a recreational activity, whether private or public.

Recreational vehicle - A dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes.

Restoration - The process of constructing man-made vegetated mounds, repairing damaged dunes, or vegetating existing dunes.

Retaining wall - A structure designed primarily to contain material and to prevent the sliding of land. Retaining walls may collapse under the forces of normal wave activity.

Sand budget - The amount of all sources of sediment, sediment traps, and transport of sediment within a defined area. From the sand budget, it is possible to determine whether sediment gains and losses are in balance.

Sandsock - A generic term for a containment system. An example of a sandsock is the geotube® containment system, which is a geotextile sand-filled containment system product.

Seawall - An erosion response structure specifically designed to or which will withstand wave forces.

Seaward of a dune protection line - The area between a dune protection line and the line of mean high tide.

Shore protection project - See "Coastal and shore protection project."

Small-scale construction - Construction activity less than or equal to 5,000 square feet and habitable structures less than or equal to two stories in height. Single-family habitable structures are typical of this type of construction.

Structure - Includes, without limitation, any building or combination of related components constructed in an ordered scheme that constitutes a work or improvement constructed on or affixed to land.

Swales - Low areas within a dune complex located in some portions of the Texas coast which function as natural rainwater collection areas and are an integral part of the dune complex.

Unique flora and fauna - Endangered or threatened plant or animal species listed at 16 United States Code Annotated, §1531, the Endangered Species Act of 1973, and/or the Parks and Wildlife Code, Chapter 68, or any plant or animal species that the County has determined in this Plan are rare or uncommon.

Vegetation line - See line of vegetation.

Washover areas - Low areas that are adjacent to beaches and are inundated by waves and storm tides from the Gulf of Mexico. Washovers may be found in abandoned tidal channels or where foredunes are poorly developed or breached by storm tides and wind erosion.